IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Premia alias Prem Prakash Vs. State of Rajasthan

S.B.CRIMINAL APPEAL NO.243/1988
against the judgment dt.17.6.1988
passed by Addl.Sessions Judge No.2, Hanumangarh,
in Sessions Case No.64/1987.

Date of Judgment: July 03, 2007

P R E S E N T

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.S.G.Ojha)
Mr.Pawan Ojha) for appellant.

Mr.V.R.Mehta, Public Prosecutor.

BY THE COURT:

1. This is an appeal against the judgment of learned Additional Sessions Judge No.2, Hanumangarh, whereby he convicted accused appellant Premia alias Prem Prakash under Section 376 IPC and sentenced him to seven years' rigorous imprisonment and to pay a fine of Rs.five hundred & in default, to further undergo three months' R.I.

2. The facts leading to this appeal are that on 26.8.1987 at 1.30 PM, Mst.Sita wife of Laxman filed a report Ex.P.1 that on the preceding day i.e. 25.8.1987 in the morning at about 9.00 or 9.30 AM, when she went in the field of Bhinya Raika and was returning back to village Biradhwal after getting eased out, accused Premia all of a sudden came and caught hold of her. Thereafter, the accused Premia threw her on the ground, put off his "Paijama", lifted her "Ghaghra" & committed rape on her. When she tried to resist, accused Premia gave a blow on her eye and threatened to kill her, if she made a cry. When she again made a cry, her aunt-in-law Mst.Chandkauri came and exhorted him. Upon this, accused Premia fled away from the place of occurrence. The medical examination of Mst.Sita was got conducted on 26.8.1987 by doctor at 2.00 PM. After investigation, the challan was filed against the accused. The accused was charged under Section 376 IPC to which he pleaded not guilty. During trial, the prosecution examined seven witnesses. The statement of accused Premia was recorded under Section 313 CrPC. He produced one Ramlal as DW 1 in his defence. After hearing, the learned trial Judge convicted and sentenced the accused Premia in the manner referred-to above.

3. While assailing the judgment of the learned trial Judge, it has been contended by the learned counsel for the appellant that in this case, there was inordinate delay in lodging the F.I.R. and there were no marks of injury on any part of body of prosecutrix Mst.Sita. There was no identification of the accused. The doctor has also not supported the version of the prosecutrix about the marks of injury on her body. It is also contended by the learned counsel for the appellant that eye witness P.W.2 Chandkauri is having enmity with the accused, therefore, it is a concocted case, whereby accused Premia has wrongly been implicated.

4. On the contrary, learned Public Prosecutor has supported the judgment of the learned trial Court.

5. With regard to lodging of F.I.R., there seems no delay. The F.I.R. has been lodged on the next day of the occurrence and within the interval of 28 hours and the explanation which has been given by the husband of the prosecutrix viz; Laxman (PW 4) is that on narration of the incident by her aunt, he went to village Rajiasar and on the next day, the F.I.R. was lodged. As regards the enmity, it is true that Laxman (PW 4), who is the husband of prosecutrix Mst.Sita, has stated in the cross examination that there was enmity of accused with her aunt but when this question was put to Laxman's aunt Chandkauri (PW

2), she denied in her statement in the cross examination. As to what kind of enmity was there and what were the reasons of enmity, no specific question has been asked to PW 2 Chandkauri, who is said to be the eye witness in this case. Even nothing has been asked to the prosecutrix Mst.Sita in this regard.

6. It is true that the prosecutrix Mst.Sita has stated in her cross examination that the accused inflicted blow on her back and her bangles were broken, thereby her hands got injured and blood had also come out but these are the suggestions made in the cross examination. In examination in chief, she has stated that the accused inflicted a blow on her eye and this injury on the eye has been described in the medical examination report by Dr.Sahi Ram (PW 3) in Ex.P.2 in which he stated that there was abrasion 1/2" linear right lower orbital area of face. As the duration of this injury was 1 to 2 days, it coincides with the time of the incident. Since the prosecutrix was a married woman of about 16 years of age at the time of incident, it is not necessary that there should be any injury on the private parts of her body and in this regard, the learned trial Judge has rightly appreciated the evidence of the prosecutrix. Merely because the report of the F.S.L. has not reached, it cannot be said that the statement of the prosecutrix, which is in a quite natural way particularly when the accused is her sister's son, is concocted one. In such social

crime, no lady will speak against her own relative, which reflects her character otherwise, specially when there is no proved enmity.

7. The finding of the learned trial Judge with regard to testimony of the investigating officer about the site inspection memo seems to be quite natural, specially when the investigating officer has stated that there were marks of dragging & struggling between the two on the sand dunes. The evidence of Ramlal (DW 1) is not trustworthy because the version regarding coming of police in the village and inspecting site etc. in his presence and asking him to bring water by the police, appears to be after thought, as no such question has been put by the defence to S.H.O. Abdul Aziz (PW 7). In this way, there seems no reason to interfere with the finding of the learned trial court with regard to guilt of the accused Premia under Section 376 IPC.

8. Consequently, this appeal is dismissed and the judgment dated 17.6.1988 of the learned Additional Sessions Judge No.2, Hanumangarh, is confirmed. Since the accused Premia is on bail,

let a warrant of arrest be issued by the trial Court against him for serving out remaining part of the sentence.

(DEO NARAYAN THANVI), J.

RANKAWAT JK, PS